

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of Section 402(b)(1)(A))
of the Telecommunications Act of 1996)

CC Docket No. 96-187

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OPPOSITION OF GTE
TO PETITIONS FOR RECONSIDERATION

GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone operating companies, hereby opposes the Petitions for Reconsideration filed by AT&T Corp. ("AT&T") and MCI Telecommunications Corporation ("MCI") on March 10, 1997,¹ against the Report and Order ("Order")² issued by the Commission in the above-captioned proceeding. Since neither Petition raises issues not already considered and rejected by the Commission, GTE urges the Commission to deny the Petitions.

I. BACKGROUND

This proceeding implements Section 402(b)(1)(A) of the 1996 Telecommunications Act,³ amending Section 204(a) of the Communications Act and

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¹ Public Notice Report No. 2181, 62 Fed. Reg. 14430 (Mar. 26, 1997).

² Report and Order, *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, FCC 97-23 (released January 31, 1997).

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 codified at 47 U.S.C. §§151 et seq. ("the 1996 Act").

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reforming the Commission's rate review process for all local exchange carriers' ("LECs") tariffs. Section 402(b)(1)(A) allows LECs to file a "new or revised charge, classification, regulation or practice on a streamlined basis." Such charge, classification, regulation or practice shall be "deemed lawful" and effective on short notice.

II. The Order Correctly Determined that the "Deemed Lawful" Language Means LEC Tariffs Which Take Effect Without Prior Suspension or Investigation Are Lawful.

Both AT&T and MCI object to the finding in the Order that the term "deemed lawful" must be read to mean "that a streamlined tariff that takes effect without prior suspension or investigation is conclusively presumed to be reasonable and, thus, a lawful tariff during the period that the tariff remains in effect."⁴ Although Petitioners argue that the Commission's reading of Section 402(b)(1)(A) is "not compelled by the statutory language"⁵ or is "not a permissible interpretation of that statute,"⁶ GTE disagrees. Comments of GTE and others in this proceeding show that "deemed" in its ordinary meaning is more than a rebuttable presumption. The conclusion in the Order that the "deemed lawful," as used in this 1996 section is unambiguous and well-grounded.

⁴ Order at ¶19.

⁵ MCI at 2.

⁶ AT&T at 2.

Although AT&T (at 7-8) and MCI (at 7) argue that the Commission's reading of "deemed lawful" is contrary to years of settled law,⁷ the Commission properly understood that the 1996 Act intended sweeping fundamental changes to the existing law. Section 402(b)(1)(A) changed the old tariffing scheme with respect to certain tariffs filed, and the language used, "deemed lawful," is significantly different than past tariff statutory references.⁸ Under this new scheme, a tariff filed under this Section, once in effect, is the lawful rate. The Commission is justified in its finding that the term is unambiguous and requires no further evaluation of legislative intent.

III. The Order Correctly Determined That a Lawful Tariff Cannot Later Be Deemed Unlawful and Subject to Damages As To Past Charges.

Petitioners further object to the conclusion that if a rate goes into effect under this section, the Commission may not later award damages for past charges, although it can order prospective relief prohibiting future charges or prescribing a reasonable rate as to the future under Section 205.⁹ AT&T (at 8-10) and MCI (at 7) also argue that the Order nullifies other remedies provided in the Communications Act. Neither argument is persuasive nor justifies ignoring the statutory language. The Commission recognized

⁷ Interesting, neither AT&T nor MCI has hesitated to take advantage of the many other sweeping changes in the 1996 Act and to demand the full deregulatory benefits granted to competitors. In Section 402(b)(1)(A), Congress extended that deregulatory relief by streamlining certain local exchange carrier tariffs.

⁸ As noted in the Comments of Pacific Telesis Group (at 4) and the Reply Comments of Southwestern Bell Telephone Co. (at 4), when Congress used the term "deemed" other places in the Communications Act, it was used in a consistent manner to mean "to be determined by operation of law." See, e.g., 47 U.S.C. §§160(c), 154(g)(3)(c).

⁹ Order at ¶19.

that a tariff, which is lawful by operation of statute, cannot later be found unlawful as to past charges. Although the Petitioners seek regulatory intervention, the Order properly maintained the required legal effect.

Recognizing that in the new regulatory environment there will be greater reliance on the marketplace, rather than the regulatory process to seek relief, Congress changed the current legal effect of LECs' tariffs. Once a LEC tariff is "deemed lawful" upon taking effect, there is no longer any question of its past lawfulness to be determined in the complaint process. Section 208 permits any person to file a complaint alleging a violation of the Communications Act or the Commission's rules. If such a complaint were filed against a LEC with respect to a "deemed lawful" rate, the FCC would have to deny it as to past charges, since the rate has already been determined by statute to be "lawful." This action is no different from denying any complaint that does not allege a violation of the Act.

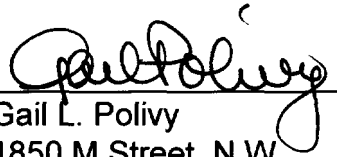
Contrary to Petitioners' suggestions, an aggrieved party is not without remedy. The Order finds a party could file a complaint alleging continuing violations and seek prospective relief. The Commission could act pursuant to Section 205. Blatantly unlawful tariffs would be rejected or suspended prior to taking effect. The holding in the Order that no damages could be awarded for the period prior to a finding of unlawfulness is fully in accordance with the restriction on retroactive ratemaking.¹⁰

¹⁰ See *Arizona Grocery Co. v. Atchison, T. & S.F. Ry. Co.*, 284 U.S. 370 (1932).

Accordingly, the Petitions for Reconsideration should be denied.

Respectfully submitted,

GTE Service Corporation on behalf of its
affiliated domestic telephone operating
companies

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Opposition of GTE to Petitions for Reconsideration" have been mailed by first class United States mail, postage prepaid, on April 10, 1997 to the following parties:

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